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May 27, 2004



VIA FACSIMILE AND U.S. MAIL

Mr. Vernon Williams, Secretary
Office the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JUN 07 2004

Part of
Public Record

**RE: Finance Docket 34192, Hi Tech Trans, LLC - - Petition for
Declaratory Order - - Hudson County, NJ**

211262

**Finance Docket No. 34192 (Sub-No. 1)
Hi Tech Trans LLC - - Petition for Declaratory Order - -
Rail Transload Facility at Oak Island Yard, Newark, NJ**

211263

Dear Secretary Williams:

We are in receipt of letters dated May 5 and 19, 2004 from counsel for Hi Tech Trans, LLC ("Hi Tech") and May 5, 2004 from counsel for the Hudson County Improvement Authority and Essex County Utilities Authority ("Counties"), all of which relate to a court decision in *Grafton and Upton Railroad Company v. Town of Milford*, No. 03-40291-NMG (D. Mass. 2004). As it has pointed out on several previous occasions, the most recent of which was September 22, 2003, the New Jersey Department of Environmental Protection ("NJDEP") must again register its disagreement with these post-record submissions.

NJDEP does not intend to present additional argument addressing *Grafton and Upton* for several reasons. First, and contrary to Hi Tech's contention, the record in this proceeding makes it crystal clear that the facts at issue here are anything but the "mirror image" of the facts described by the judge in *Grafton and Upton*. Second, the Board can read court decisions as well as counsel for Hi Tech, and thus is able to comprehend the basis upon which the court reached its conclusions without yet another round of briefs from the parties in this case. Third, the Board is competent and authorized to determine the proper scope of the provisions of



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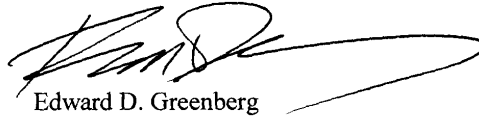
GALLAND, KHARASCH, GREENBERG, FELLMAN & SWIRSKY, P.C.

Mr. Vernon Williams, Secretary
Office the Secretary
Surface Transportation Board
May 27, 2004
Page 2

49 U.S.C. § 10501(b) in this proceeding regardless of how a District Court may have ruled in an unrelated matter. Fourth, if parties were required to brief every preemption case pending before the Board and the courts *ad infinitum*, proceedings would never come to an end. Clearly, the Board's Rules of Practice do not contemplate or countenance any such procedure, and NJDEP objects to being placed in the position of having to continually respond to additional post-record submissions.

Accordingly, NJDEP requests that these submissions be rejected.

Respectfully submitted,



Edward D. Greenberg
Special Counsel for
New Jersey Department of Environmental Protection

EDG:kmd

cc: Honorable David M. Konschnik (via U.S. Mail)
James A. Fletcher, Esq. (via U.S. Mail)
Benjamin Clarke, Esq. (via U.S. Mail)
All other parties of record (via U.S. Mail)